*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.5805 of 2007

% 02-4-2007

Kallem Srinivas Reddy S/o late Bal Reddy and others

...Petitioners

AND

$ The Principal Secretary to Government of Andhra Pradesh, Revenue Department, Secretariat, Hyderabad

...Respondents

! COUNSEL FOR PETITIONER: Sri C.Hanumantha Rao

Sri Chava Srinivas

^ COUNSEL FOR RESPONDENTS 1 to 6: Government Pleader for Revenue

Counsel for Respondent No.7 : Sri P.Radha Krishna

Counsel for Respondent No.8 : Government Pleader for Home

<GIST

>HEAD NOTE:

? CASES REFERRED:

1. 1992 (2) ALT 473
2. 1998(4) ALD 697
3. AIR 2000 SC 843
4. W.P.No.17759 of 2005 and batch, dated 09.09.2005

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5805 of 2007

.4.2007

Between:

Kallem Srinivas Reddy, S/o.late Bal Reddy
And others

… Petitioners

AND

The Principal Secretary to Government of Andhra Pradesh,
Revenue Department, Secretariat, Hyderabad
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5805 of 2007

ORDER:

Kallem Srinivas Reddy and his two brothers represented by their General Power of Attorneys (GPAs), namely, Myakala Sathaiah and Myakala Mahender, filed the instant writ petition seeking a writ of Mandamus declaring the action of the first respondent in not communicating the orders of exemption on application dated 01.3.2006 made by the petitioners seeking benefit under G.O.Ms.No.733, dated 31.10.1988, as illegal and arbitrary, and for a further declaration that the petitioners are entitled for the exemption of their land from the purview of the provisions in Chapter-III of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act, for brevity). The petitioners also seek a direction to respondents not to interfere with possession and enjoyment of the said property.

The petitioners are allegedly the owners and possessors of land admeasuring Acs.5.20 gts (22,782 Sq.mts) in survey Nos.32, 34 and 35 of Kothapet village of Saroornagar Mandal in Ranga Reddy District. After coming into force of the Act, the petitioners filed declaration under Section 6 of the Act, which was registered as C.C.No.J1/3816/76, and they were declared as surplus landholders in Hyderabad Urban Agglomeration. A reading of paragraphs 6 and 8 of the affidavit accompanying the writ petition would show that after passing the final orders under Section 8(4) of the Act, the third respondent issued notifications under Sections 10(1) and 10(3) of the Act as well as notices under Sections 10(5) and 10(6) of the Act, to take possession. Be that as it may, the petitioners also preferred the revision petition under Section 34 of the Act against the orders of the third respondent which is allegedly pending before the Government.

In 2000, petitioners entered into an agreement of sale-cum-GPA in favour of Myakala Sathaiah and Myakala Mahender. These two

persons along with four others filed an application on 01.3.2006 before the first respondent requesting necessary instructions to the third respondent, that the land purchased by the GPAs is exempted from the purview of the Act, as per the orders of the Government in G.O.Ms.No.733. The first respondent vide memo No.10324/UC.II/06(3), dated 14.3.2006, requested the third respondent to send a detailed report as per G.O.Ms.No.733, dated 31.10.1988 read with G.O.Ms.No.217, dated 18.4.2000 along with records in C.C.No.J1/3816/76. Even when the matter is under consideration, Sathaiah and Mahender along with four others again filed another representation dated 23.1.2006 requesting the Government to issue necessary instructions to third respondent to exempt the land.

Learned Counsel for the petitioners placed reliance on the decisions of this Court in **Nalla Yakoob v The Govt. of A.P.**[1], **P.S.Rao v The Special Officer and Competent Authority**[2] and a decision of the Supreme Court in **Special Officer & Competent Authority, Urban Land Ceilings v P.S.Rao**[3] in support of the contention that when once the land falls within the peripheral area without there being any further orders, the land to an extent of Acs.5.00 stands exempted as per the guidelines issued in G.O.Ms.No.733 and, therefore, the petitioners cannot be deprived of their right. **Opposing** the writ petition learned Assistant Government Pleader for Revenue (ULC) submits that the original owners filed declarations and final orders as well as notifications under Section 10 were already issued and at that stage petitioners preferred review petition under Section 34 of the Act. As the original owners sold away the land to the GPAs after the land was declared as surplus, G.O.Ms.No.733 has no application to the facts of the case. Inviting the attention of the Court to the revision petition filed by the petitioners, learned Assistant Government Pleader submits that all the proceedings under the Act have attained finality and, therefore, the alienation of excess vacant land made by the original owners is void.

Pleadings in the writ petition

In the affidavit filed by Myakala Sathaiah in support of the writ petition, the details of ULC proceedings are not given. The affidavit is devoid of any material facts, which are necessary for adjudicating the issue. Indeed the affidavit is not in compliance with Writ Proceedings Rules, 1977 (the Rules, for brevity). Rule 5 of the Rules reads as under.

> 5(a) Every affidavit shall be drawn up in the first person and shall set forth succinctly and in chronological order all the relevant facts and the grounds for the relief sought. The statement of

facts shall be divided into consecutively numbered paragraphs, each paragraph being confined as nearly as may be to a distinct portion of the subject.

(b) The affidavit shall state:-

(i) the particular right conferred by the provisions of Part III of the Constitution of India sought to be enforced:

(ii) the other purpose for which relief is sought:

(iii) the particular law impugned and how it is not constitutionally valid and whether it is a State Law, Central Law or State and Central Law:

(iv) Whether any alternative remedy for the relief sought is provided for by or under any other law for the time being in force, and whether that remedy has been availed of and if so, with what result, by way of a separate paragraph:

(v) Whether the petitioner had or had not already filed a writ petition in the High Court or instituted any suit or other legal proceedings in any Court of Law or Tribunal either for the same or substantially the same relief on a previous occasion and if he had done so, the particulars of the petition, suit or other proceedings and the result thereof shall also be mentioned in the affidavit, by way of a separate paragraph.

(c) When the deponent speaks to facts within his knowledge he shall do so directly and positively using the words:

I make oath (or affirm) and say ……

(d) When a particular fact is not within the deponent's knowledge, but is stated upon information the deponent shall use the words I, am informed by (giving the source of information) and verily believe it to be true and set out the grounds of his belief.

(e) Every affidavit stating any matter of opinion shall show the qualification of the deponent to express such opinion by referring to his length of experience, acquaintance with or other means of knowledge of the person or matter as to which the opinion is expressed.

(f) A petition for a Writ or Habeas Corpus shall be accompanied by an affidavit by the person restrained setting out the nature and circumstance of the restraint:

Provided that where the person restrained is unable owing to the restraint to make the affidavit, the petition shall be accompanied by an affidavit made by some other person acquainted with the facts, which shall state the reason why the person restrained is unable to make the affidavit.

(g) An application shall state the provisions of Law under which it is made and shall not contain more than one prayer unless the prayers are consequential.

None of the above requirements are complied with in the affidavit filed along with the writ petition. The affidavit is vague, bereft of details, not succinct and this Court has had to take sufficient pain to

read the affidavit thoroughly and understand the same. When citizens approach the Court for redressal of their grievances under extraordinary powers of the High Court under Article 226 of Constitution of India, it shall be the duty of every citizen or the counsel engaged by such citizen to assist the Court from the stage of pleadings by strictly adhering to the Rules or procedure. Unless such procedure is strictly adhered to, the High Court would be at disadvantage and there is likely to be miscarriage of justice.

ULC Proceedings stand conclude:

Along with the writ petition, agreement of sale-cum-GPA executed by petitioners in favour of Sathaiah and Mahender has been annexed. The same would disclose that it is an unregistered document executed by petitioners on 28.8.2000. However, in the representations dated 01.3.2006 as well as 24.3.2006, Sathaiah, Mahender and four others alleged that they purchased Acs.3.11 gts under six different sale deeds bearing document Nos.6750, 6751, 6752, 7017, 7018 and 7019 of 2000 from the petitioners. These documents have not been annexed to the writ petition but the fact remains that statedly Acs.3.11 gts (out of Acs.5.20 gts) in survey Nos.32, 34 and 35 was purchased by GPAs in 2000. Whether these sales are not valid as urged by the learned Assistant Government Pleader?

A perusal of the revision petition filed by the petitioners before the Government would reveal the following factual position. The petitioners filed declaration before the third respondent. In the said declaration being C.C. No.J1/3816/76, the third respondent passed final orders under Sections 8(4) read with 9 of the Act on 12.12.1981. A notification under Section 10(1) of the Act was issued on 12.11.1982 followed by a notification under Section 10(3) of the Act on 01.3.1983 by which the land vested in the Government free from all encumbrances. A notice under Section 10(5) of the Act was issued on 07.4.1983 to the persons in possession of the land, to vacate land and when those persons failed to comply with the notice under Section 10(5) of the Act, orders were passed under Section 10(6) of the Act on 23.12.1983. It is also admitted in the revision petition that a notice issued under Section 11(8) of the Act for determination of the amount payable to the vacant land for the owners was issued on 18.3.1988. It is only thereafter the petitioners sold the land to six persons. By the date of the sale, the land absolutely vested in the Government and, therefore, the petitioners could not have transferred or sold land to the two GPAs and four others.

In the factual situation as above, can the person, who purchased

the land in 2000 two decades after the land vested in the Government, claim the benefit under G.O.Ms.No.733, dated 31.10.1988? The answer should be in negative for reasons more than one. G.O.Ms.No.733 was issued by the Government in exercise of their powers under Section 20(1)(a) of the Act to grant exemption in respect of excess vacant land held by individuals to an extent of Acs.5.00 in peripheral areas of Hyderabad, Visakhapatnam, Vijayawada, Warangal, Guntur and other urban agglomerations (see preamble of paragraph 6 of the G.O.). The exemption of land to an extent of Acs.5.00 in peripheral areas of urban agglomeration is in respect of the land held by such an individual prior to issue of the G.O. If the owner of the land alienates/transfers the land before coming into force of the G.O., such exemption is not available. This aspect of the matter has been considered by this Court in **Thatipalli Shankeralingam v State of Andhra Pradesh**[4], wherein it was held as under.

> It is needless to point out that Section 3 of the Act prohibits any person hold vacant land in excess of the ceiling limit as mentioned in Section 4 thereof. Section 5 prohibits any person having vacant land in excess of the ceiling limit from transferring such land by way of sale, mortgage, gift, and lease or by any other transfer. Section 5(2) renders all such transfers null and void. …… …... It is axiomatic that a citizen can invoke the jurisdiction of this Court either to enforce a right or to compel a statutory authority of the public authority to discharge public duties. A person/persons, who claim some right by a reason of a transaction, which void cannot be said to have any enforceable right. Law Courts and the Constitution Courts can only enforce the legal rights or, contractual rights or common law rights and they are not enitled to enforce non-existing rights.

As seen from the facts of the case, even before the issue of G.O.Ms.No.733, by reason of a notification dated 31.3.1983 under Section 10(3) of the Act, the land absolutely vested in the Government free from all encumbrances. G.O.Ms.No.733 applied only to individuals, who hold the land in the peripheral area. When the land is vested in the Government by reason of notification under Section 10(3) of the Act, can it be said the original owners or the subsequent purchasers (GPAs) hold the land even if the alienation is by reason of sale deed? Again the answer must be in negative. Paragraph 6 of the G.O.Ms.No.733 reads as under.

> "Now, therefore, in exercise of the powers conferred under Section 20 (1) (a) of the Urban Land (Ceiling and regulation) Act, 1976 and of all other powers hereunto enabling and in suppression of all other orders issued previously in this behalf from time to time, the Government of Andhra Pradesh hereby accord:

(a) Exemption of the vacant land or the agricultural land which is likely to be used for non-agricultural purposes at the option of the holder thereof, or, both, to a maximum extent of five acres situated within the peripheral area as specified in column (3) of Schedule-I to the Urban Land (Ceiling and Regulation) Act, 1976 of the Hyderabad Urban Agglomeration, Visakhapatnam Urban Agglomeration, Vijayawada Urban Agglomeration, Guntur and Warangal Urban Agglomerations in excess of the ceiling limit, from the provisions of Chapter III of the said Act; and

(b) Permission to transfer any such land or part thereof by a person by way of sale, mortgage, gift, lease or otherwise, to the extent of five acres of land in excess of ceiling limit, excluding the area required for roads, hospitals and for other public use."

The scope of the above paragraph was explained in **Thatipalli Shankeralingam** (supra) wherein it was held as follows.

> The term "to hold" is defiled in Section 2(l) as to own the land, or to possess the land as owner, tenant, mortgage, under GPA, or under hire- purchase agreement, as on the date of coming into force of the Act. The person who purchase the land governed by the provisions of the Act, after coming into force of the Act is not a person who can be called to hold the land. Be it noted, that by a reason of Sections 3, 5 (1) and 5(2) of the Act any transaction for transfer of urban vacant land is void and the person cannot be termed as "holder" of the land. When the Government issued G.O.Ms.No.733, they were aware of the clear distinction. That is the reason why Para No.6(a) of G.O.Ms.No.733 exempts the vacant land, which is likely to be used for non-agricultural purposes at the option of the holder. It indicates two things. First, the land remained on continued to remain till October, 1988 as agricultural land in the peripheral area and secondly, the holder of such land wants to convert it into non-agricultural purpose. If, by the time of issue of G.O.Ms.No.733 dated 31-10-1988, agricultural land in peripheral area seized to be as such, the Government Order has no application.

Apart from the above situations, another situation where the G.O. cannot be applicable would be the case on hand. By the time the G.O. was issued in October 1988, the land vested in the Government and proceedings under Section 10(6) of the Act to take possession was also issued. When the land is held by the State Government by reason of Section 19(1), the Act has no application and, therefore, the question of applying G.O.Ms.No.733, dated 31.10.1988 does not arise. It must not be forgotten that G.O.Ms.No.733 applies only for the land held by individuals and not for the land which is exempted under Section 19 of the Act. The petitioners herein already filed declarations

and their holding of vacant land was already declared to be surplus vacant land which is vested in the Government. Therefore, the petitioners could not have sold the land in 2000 to Sathaiah, Mahender and four others. Such void and speculative sale do not confer any rights to seek remedy under Article 226 of Constitution of India.

The petitioners *inter alia* prayed for a declaration that the land in survey Nos.32, 34 and 35 admeasuring 22,782 Sq.mts stands exempted from the provisions of Chapter-III of the Act under G.O.Ms.No.733, dated 31.10.1988. For the reasons aforementioned, such a declaration cannot be granted because the petitioners (original owners) or their GPAs under agreements of sale or purchasers have no such right in respect of the land which is vested in the State Government.

The writ petition is devoid of merits and is accordingly dismissed. No costs.

(**V.V.S.RAO, J**)

April , 2007.
L.R.Copy be marked.
(By order)
YS

---

[1] 1992(2) ALT 473

[2] 1998(4) ALD 697

[3] AIR 2000 SC 843

[4] W.P.No.17759 of 2005 and batch, dated 09.9.2005